

**Testimony in Support of HB 138**  
**Before the House Natural Resources Committee**  
**On Behalf of the Clark Fork River Basin Task Force**  
**By Gerald Mueller**  
**February 9, 2007**

Chairman McNutt and members of the committee, my name is Gerald Mueller. I live at 440 Evans, Missoula, Montana. My telephone number is 543-0026. I present this testimony on behalf of the Clark Fork River Basin Task Force (Task Force) in support of HB 138.

**Task Force Background**

The Task Force was created in 2001 pursuant to 85-2-350 MCA and directed by that statute to prepare a water management for the Clark Fork River Basin that would identify options to protect the security of basin water rights, and provide for the orderly development and conservation of water in the future. In September of 2004, the Task Force provided to the Governor and the legislature the required plan, entitled the *Clark Fork River Basin Watershed Management Plan*. A list of Task Force members is appended to this testimony.

**HB 138**

A primary concern of the Task Force is protecting existing water rights. We acknowledge that growth in the Clark Fork River basin, and much of western Montana, is a fact. The state must find a way to accommodate growth and the increased water demands that come with it without abandoning the first-in-time, first-in-right water allocation system.

We support HB 138, not because it is a perfect bill, but because it provides better protection to existing rights than the alternative HB 373. Montana's western valleys are underlain by alluvial aquifers. Development of these aquifers affects surface water. HB 138 acknowledges the connection between surface and ground water and through augmentation attempts to ensure that additional ground water development does not adversely affect surface water and existing water rights. While the Task Force supports the concept of augmentation, we believe the devil will be in the implementation details. Should augmentation be approved, water users and DNRC will have much to learn about whether and how augmentation will work in practice.

We have three specific concerns with the language of HB 138. The first is with the definition of municipality, "...municipality" means an incorporated city or town..." Subdivision activity is occurring in many unincorporated areas. Limiting basin closure "municipal" exceptions to incorporated areas may drive subdivision development in unincorporated areas to use of individual exempt wells when a community well would otherwise be in the public interest.

Second, we do not support substituting the requirement that a report be prepared by a professional engineer or hydrologist with looser language "person educated and experienced in ground water science." We are not sure who would and would not qualify under the looser standard.

Third, and most important, we oppose changing the language that the augmentation plan must provide for "sufficient augmentation water in amount, time, and location to replace depletions to senior water rights" to "reasonably replace, in each reach affected, the amount of water that will

be consumed by the proposed new use.” The “reasonably replace” language will provide less protection for senior water rights.

Montana’s Constitution in Article IX Section 3 (1) states, “All existing rights to the use of any waters for any useful or beneficial purpose are hereby recognized and confirmed.” While we understand that growth must be accommodated, the Task Force is adamant that the accommodation must not occur to the detriment of existing water rights. Favoring the new uses undermines the meaning of Article IX Section 3 (1).

Thank you.

## Clark Fork River Basin Task Force

Name	Organization	Area/Interest Represented
Marc Spratt	RLK Hydro	Flathead Basin above Flathead Lake
Nate Hall	Avista	Hydropower Utilities
Holly Franz	PPL Montana	Hydropower Utilities
Matt Clifford	Clark Fork Pend Oreille Coalition	Conservation/Environment
James Steele	Confederated Salish and Kootenai Tribes	Indian Tribes
Gail Patton	Sanders County Commissioner	Basin Local Governments
Vacant		Clark Fork River Watershed below Flathead River confluence
Arvid Hiller	Mountain Water Company	Municipal water companies and the Clark Fork River Watershed between the confluence of the Blackfoot River and the Clark Fork River and the confluence of the Clark Fork River and the Flathead River
Elna Darrow	Flathead Basin Commission	Flathead Lake
Steve Hughes	Joint Board of Control	Flathead River watershed below Flathead Lake to the confluence with the Clark Fork River
Harvey Hackett	Bitter Root Water Forum	Bitterroot River watershed
Fred Lurie	Blackfoot Challenge	Blackfoot River watershed
Jim Dinsmore	Granite Conservation District & Upper Clark Fork River Basin Steering Committee	upper Clark Fork River watershed
Verdell Jackson, <i>Ex Officio</i>	State Representative	House District 6
Joey Jayne <i>Ex Officio</i>	State Representative	House District 15
Jim Shockley <i>Ex Officio</i>	State Senator	Senate District 45